

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TOMAS L. MENEWEATHER,

No. C 08-04458 SBA (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

EVANS, Warden, et al.,

Defendants.

On November 4, 2009, the Court issued an Order of Dismissal With Leave to Amend and gave Plaintiff thirty days from the date of the Order to file an amended complaint linking each individual Defendant to a specific constitutional violation and demonstrating that he exhausted all of his claims. Plaintiff was warned that a failure to do so would result in the dismissal of this action.

The time for Plaintiff to file his amended complaint has passed, and no amended complaint has been filed. Accordingly, IT IS HEREBY ORDERED that the complaint in the above-captioned action is DISMISSED for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). The Court has rendered its final decision on this matter; therefore, this Order TERMINATES Plaintiff's case. The Clerk of the Court shall terminate all pending motions and close the file.

When and if Plaintiff is prepared to pursue his claims, he may file a new civil rights action. The limitations period to file a § 1983 action in California is two years, but it is tolled for up to two years during a continuous period of incarceration. See Silva v. Crain, 169 F.3d 608, 610 (9th Cir. 1999) (holding, pursuant to Cal. Civ. Proc. Code § 340(3), that the limitations period for filing a § 1983 action in California is one year); S.B. 688 (amending Cal. Civ. Proc. Code § 340(3) and adding § 335.1 to establish two-year residual limitations period for personal injury actions); Cal. Civ. Proc. Code § 352.1(a) (providing for an additional two years of tolling during a period of continual imprisonment).

IT IS SO ORDERED.

DATED: 12/8/09


SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF
4 CALIFORNIA

5 TOMAS L. MENEWEATHER,

6 Plaintiff,

7 v.

8 EVANS et al,

9 Defendant.
10 _____/

Case Number: CV08-04458 SBA

CERTIFICATE OF SERVICE

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on December 10, 2009, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Tomas Lopez Meneweather D35219
18 Salinas Valley State Prison
19 P.O. Box 1050
20 Soledad, CA 93960

21 Dated: December 10, 2009

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk